

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-CR-163

BERNABE J NUNEZ-GUZMAN ,

Defendant.

ORDER DENYING MOTION TO RECONSIDER EVIDENTIARY HEARING

Pending before the Court are motions by Defendant Bernabe J Nunez-Guzman to suppress identification testimony. The motions have been pending for some time and, initially, the Government did not oppose the setting of an evidentiary hearing—at least on the first motion. Having further reviewed its file and in view of the second motion, the Government now believes that an evidentiary hearing is not required. The Government disputes whether the evidence supports the defense argument that the identification procedure was suggestive. Moreover, it argues that, at least as to some of the witnesses, there is clearly an independent basis to support the identification.

The Government’s argument is not without merit, but it appears that there is a factual dispute as to the identification procedure that was actually used. Rather than cancel a hearing that has been set for some time, and perhaps in an overabundance of caution, the Court concludes that the hearing will go forward. In the event that it becomes clear at the hearing that the defense is simply seeking to “depose” the Government’s witnesses as the Government states it fears in its

brief, it may request a termination of the hearing. As matters now stand, however, it appears that the parties do have a dispute as to the manner in which the identifications occurred. Given that factual dispute, the hearing will go forward.

SO ORDERED this 28th day of September, 2011.

s/ William C. Griesbach
William C. Griesbach
United States District Judge